

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 6/12/02      Item 3.m.

File Number  
CP02-022

Application Type  
Conditional Use Permit

Council District  
5      SNI  
East Valley/680 Communities

Planning Area  
Alum Rock

Assessor's Parcel Number(s)  
484-20-028, -029

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Sally Notthoff Zarnowitz

Location: East side of South Capitol Avenue between Alum Rock and Rose Avenues

Gross Acreage: 0.37

Net Acreage: 0.37

Net Density: n/a

Existing Zoning: CP Commercial Pedestrian

Existing Use: Vacant land

Proposed Zoning: No change

Proposed Use: Removal and relocation of **The Orange** City Landmark for a hotdog restaurant with outdoor seating within 150 feet of residential uses

### GENERAL PLAN

Completed by: SNZ

Land Use/Transportation Diagram Designation  
Medium Density Residential (8-16 DU/AC)

Project Conformance:  
☐ Yes    ☒ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: SNZ

North: Single-family residence

CP Commercial Pedestrian

East: Single-family attached residential

A(PD) Planned Development

South: Single-family residence

CP Commercial Pedestrian

West: Automotive repair facility

A(PD) Planned Development

### ENVIRONMENTAL STATUS

Completed by: SNZ

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☒ Negative Declaration adopted on January 7, 2000

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: SNZ

Annexation Title: Capitol No. 29

Date: April 28, 1970

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date \_\_\_\_\_

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANTS/OWNERS

### DEVELOPER

Bill Zavalaris	Demos Pantelides	Nola Kendall	Bonnie Bamburg	Robert Giannini
Comm. Housing Developers	303 Castro Street	96 Decker Way	10710 Ridgeview Avenue	126 Post St.
255 N. Market Street, No. 290	San Francisco, CA 94114	San Jose, CA 95127	San Jose CA 95127	San Francisco CA 94108
San Jose, CA 95110				

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: SNZ

Department of Public Works

See attached memorandum

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**Other Departments and Agencies**

See attached memorandum from Susan Queirolo, Historic Preservation Officer, regarding Historic Landmarks Commission recommendation on January 12, 2000.

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**GENERAL CORRESPONDENCE**

See attached letter from Community Housing Developers regarding the neighborhood meeting.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Demos Pantelides is requesting a Conditional Use Permit to relocate The Orange City Landmark from 1920 Alum Rock Avenue to the east side of Capitol Avenue between Alum Rock and Rose Avenues. The Orange will be used for a hot dog restaurant with outdoor seating within 150 feet of residential uses.

The Zoning Ordinance requires a Conditional Use Permit for outdoor uses in the CP Commercial Pedestrian zoning district that would be within 150 feet of a residentially-zoned property. The project incorporates the Site Development Permit requirement for removal and relocation of a building from one parcel to another separate parcel located within the City. The subject site on Capitol Avenue is currently vacant. Surrounding land uses consist of an uninhabited single-family residence to the north in the Commercial Pedestrian Zoning District, single-family attached residential to the east, single-family detached residential to the south in the Commercial Pedestrian Zoning District, and an automobile repair facility to the west Across Capitol Avenue. Commercial land uses are located at the corner of Alum Rock and Capitol Avenues.

In 1992, the City Council designated The Orange building and site on Alum Rock Avenue as a City Landmark. On January 12, 2000 the Historic Landmarks Commission recommended approval of the project to relocate The Orange. On February 2, 2000, the Director of Planning granted a Historic Preservation Permit for the project that is only valid in conjunction with this Conditional Use Permit. On February 22, 2000 the Planning Commission adopted a resolution to grant a Conditional Use Permit CP99-09-053 for the project. The Conditional Use Permit expired on February 22, 2002, two years after the date of adoption of the resolution by the Planning Commission.

**Project Description**

The project will relocate The Orange structure and “Mark’s Hot Dogs” sign to a vacant site on the east side of Capitol Avenue approximately 400 feet south of Alum Rock Avenue. Approximately 11 to 14 feet of street dedication is required to facilitate extension of the Capitol Corridor Light Rail line. The Orange and the sign will be set back 25 and 6 feet, respectively, from the future right-of-way. The service opening of the spherical building will face four outdoor tables with two benches each. A 497-square-foot building located opposite The Orange contains a storage room, office, and rest rooms. All doors face the center of the project. A sloped drive-

in canopy 17 feet 6 inches in height with wooden columns will cover the buildings and tables. The structures adjoin a 26-foot-wide driveway and ten parking spaces. Setbacks are landscaped to a depth of 10 feet to the north and east, and from 20 to 25 feet to the south and west. A 7-foot high wood fence is proposed adjacent to the existing single family residences in the CP Commercial Pedestrian zoning district. The fence is three feet in height in the front setback to allow a clear line-of-site into the property. A 7-foot-high masonry wall is proposed adjacent to residential interfaces at the rear of the site. The subject permit would facilitate development of the current Mark's Hot Dogs site on Alum Rock Avenue for a mixed-use project, (File Number PDC02-029), containing first-floor retail with senior housing above facing the street, and single-family attached residential uses on the rear of the site. The rezoning for this project was recommended for approval by the Planning Commission on May 22, 2002.

The project is essentially the same as that approved under the previous Conditional Use Permit. The conceptual drainage plan has been revised to include a grassy swale for storm water filtering and the installation of a storm lateral stubbed at the property line to allow future connection into a future storm main along Capital Avenue. This permit provides for a wooden fence in place of the previously-required masonry wall on the side property lines adjacent to commercially-zoned properties, as future commercial development on these sites will not require the buffering of a masonry wall from The Orange activities.

## **ENVIRONMENTAL REVIEW**

An Initial Study was prepared for this project and the Director of Planning adopted a Negative Declaration on January 7, 2000. The proposal will not have a significant effect on a designated historic resource. On December 8, 1999, a historic evaluation was prepared and submitted for the proposed project. The historic evaluation concluded the project would maintain the integrity of the City Landmark. It further concluded the project would enable The Orange to maintain its City Landmark status, and its eligibility for listing on the California Register and the National Register of Historic Places.

## **GENERAL PLAN CONFORMANCE**

The proposed use does not conform with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential (8-16 DU/AC). However, the proposed project meets the intent of the "Structures of Historical or Architectural Merit" Discretionary Alternate Use Policy. This Discretionary Use Policy allows land uses on sites other than those designated on the Land Use/Transportation diagram designation if to do so would enhance the likelihood that significant historic/architectural structures would be preserved, and the use is not otherwise incompatible with the surrounding uses. The Orange is a designated City Landmark and is considered a significant historic structure. The proposed project is for the relocation and use of the structure, consistent with its historic significance.

The proposed project is consistent with the planned pattern and character of development near the subject site in that it is located on a main thoroughfare in close proximity to commercial development and the Neighborhood Business District at the corner of Alum Rock and Capitol Avenues. The proposed Conditional Use permit includes conditions to ensure appropriate relocation, preservation and use of this City Landmark.

## **ANALYSIS**

The primary issues discussed below include (1) historic evaluation, and (2) consistency with the Commercial Design Guidelines and Zoning Ordinance.

### Historic Evaluation

The applicant submitted a historic evaluation of The Orange dated December 8, 1999. According to the report, Mr. Mark Yeram, an Armenian immigrant, built The Orange in 1947 at 1920 Alum Rock Avenue for use as a hot dog restaurant. The Orange is styled after the giant orange stands built by Frank Pohl to sell fruit juice, food, and beverages along highways in the central valley during the 1920's and 1930's. Its significance is based on an architectural style designed to advertise to persons travelling in automobiles along roadways prior to the popularity of television advertising during the 1950's and 1960's. The Orange also derives its significance from its prominent setting on a major thoroughfare. The report states The Orange is the only remaining local representation of this design in Santa Clara County and possibly northern California. The historic evaluation concluded that The Orange qualifies as a City Landmark, and is eligible for listing on the California Register and the National Register of Historic Places. The historic evaluation analyzed the proposal to relocate The Orange structure and "Mark's Hot Dogs" sign to the vacant site on the east side of Capitol Avenue south of Alum Rock Avenue. The project combines The Orange and the sign with a new wooden patio cover and a new 497-square-foot structure for use as a hot dog restaurant with outdoor seating. The original setting of The Orange would be recreated by locating the structure and original sign along a major roadway with a new patio cover for the drive-in parking. Outdoor seating and a storage building will be located below the patio cover similar to the existing setting on Alum Rock Avenue. The project allows The Orange to be the most visible structure on the site and enable it to function in its original capacity as a car-service food stand.

The project preserves The Orange as one of the last intact and operating giant orange stands. It intends to recreate the roadside architecture and advertising theme that capitalized upon the popularization of the automobile during the 1940's. The historic evaluation concludes the project maintains (1) the physical integrity of The Orange, (2) its status as a City Landmark, and (3) its eligibility for listing on the California Register and National Register of Historic Places.

Staff supports the recommendations of the historic report that the applicant retain a qualified consultant to conduct photo and written documentation according to Historic American Building Survey (HABS) standards while The Orange and its defining features are in their original location. Staff also supports the recommendation that the developer follow the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* during removal, relocation, and rehabilitation of The Orange.

#### Consistency with the Commercial Design Guidelines, Zoning Ordinance, and Sign Ordinance

The front setback of the project exceeds the ten-foot maximum of the Commercial Pedestrian zoning district. The Zoning Ordinance (20.40.260) allows the exception to the maximum front setback in this district in that the allowance of a greater setback on the subject lot would be more consistent with the existing pattern of development. The side and rear setbacks adjacent to residential buildings exceed the 1.5 to 1 feet required by the Guidelines. Setbacks to driveways and parking meet or exceed the 10 feet required adjacent to residential interfaces. The interfaces to residentially-zoned uses are addressed with 10-foot wide landscape strips and 7-foot high fences or walls as required by the Guidelines. Landscaping consists of turf, shrubs, and trees such as Evergreen Pear, London Plane, and relocated Palm trees. The trash enclosure is masonry construction with a sloped roof to fully contain debris.

The project contains 40 linear feet of benches that equals 20 seats which are each 2 feet in width. The project meets the Zoning Ordinance parking requirement of 8 spaces (one space for every 2.5 seats). The project exceeds CP Commercial Pedestrian setbacks for both the side and rear setbacks.

The proposed reconstruction of the "Marks Hot Dogs" sign conforms to the Sign Ordinance in that the Sign

Code allows the Planning Commission to approve the reconstruction and erection of historic signs that are not otherwise allowed under the Sign Ordinance if the building, structure, or sign has been designated as a historic landmark by the City Council.

## **PUBLIC OUTREACH**

The developer and the property owner of The Orange City Landmark site at 1920 Alum Rock Avenue held a noticed community meeting on Sunday, January 30, 2000. The property owner prepared a written synopsis of the meeting with the list of attendees. Staff was not able to be present at the meeting.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram. A Discretionary Alternate Use Policy for structures of Historical or Architectural Merit allows alternate land uses other than those on the Diagram if the proposed project would enhance likelihood that significant historic/architectural structures are preserved and the proposal is not incompatible with surrounding uses.
2. The project site is located in the CP Commercial Pedestrian Zoning District.
3. A Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
4. The subject site on Capitol Avenue is currently vacant. Surrounding land uses consist of an uninhabited single-family residence in the CP Commercial Pedestrian zoning district to the north, commercial and single-family attached residential to the east, single-family detached residential in the CP Commercial Pedestrian zoning district to the south, and an automobile repair facility in the A(PD) Planned Development zoning district to the west. Commercial land uses are also located at the corner of Alum Rock and Capitol Avenues.
5. The project will relocate The Orange structure and “Marks Hot Dogs” sign to a vacant site on the east side of Capitol Avenue approximately 400 feet south of Alum Rock Avenue. Approximately 11 to 14 feet of street dedication is required to facilitate extension of the Capitol Corridor Light Rail line. The Orange and the sign will be located 25 and 6 feet, respectively, from the future right-of-way.
6. The service opening of the spherical building will face four outdoor tables with two benches each. A 497-square-foot building located opposite The Orange contains a storage room, office, and rest rooms. All doors face the center of the project. A sloped drive-in canopy 17 feet 6 inches in height with wooden columns will cover the buildings and tables. The structures adjoin a 26-foot-wide driveway and ten parking spaces. Setbacks are landscaped to a depth of 10 feet to the north and east, and from 20 to 25 feet to the south and west. A 7-foot high wood fence is located adjacent to commercially-zoned properties at the side property lines of the site. The fence is three feet in height in the front setback to allow clear line-of-site. A 7-foot-high masonry wall is located adjacent to residentially-zoned property

interfaces at the rear of the site.

7. The applicant submitted a historic evaluation of The Orange dated December 8, 1999. According to the report, Mr. Mark Yeram, an Armenian immigrant, built The Orange in 1947 at 1920 Alum Rock Avenue for use as a hot dog restaurant. The Orange is styled after the giant orange stands built by Frank Pohl to sell fruit juice, food, and beverages along highways in the central valley during the 1920's and 1930's. Its significance is based on an architectural style designed to advertise to persons travelling in automobiles along roadways prior to the popularity of television advertising during the 1950's and 1960's. The Orange also derives its significance from its prominent setting on a major thoroughfare.
8. The report states The Orange is the only remaining local representation of this design in Santa Clara County and possibly northern California. The historic evaluation concluded that The Orange qualifies as a City Landmark, and is eligible for listing on the California Register and the National Register of Historic Places.
9. The historic evaluation analyzed the proposal to relocate The Orange structure and "Mark's Hot Dogs" sign to the vacant site on the east side of Capitol Avenue south of Alum Rock Avenue. The project combines The Orange and the sign with a new wooden patio cover and a new 497-square-foot structure for use as a hot dog restaurant with outdoor seating. The original setting of The Orange would be recreated by locating the structure and original sign along a major roadway with a new patio cover for the drive-in parking. Outdoor seating and a storage building will be located below the patio cover similar to the existing setting on Alum Rock Avenue. The project allows The Orange to be the most visible structure on the site and enable it to function in its original capacity as a car-service food stand.
10. The project preserves The Orange as one of the last intact and operating giant orange stands. It intends to recreate the roadside architecture and advertising theme that capitalized upon the popularization of the automobile during the 1940's. The historic evaluation concludes the project maintains (1) the physical integrity of The Orange, (2) its status as a City Landmark, and (3) its eligibility for listing on the California Register and National Register of Historic Places.
11. The historic report recommends that the applicant retain a qualified consultant to conduct photo and written documentation according to Historic American Building Survey (HABS) standards while The Orange and its defining features are in their original location. The report also recommends that the developer follow the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* during removal, relocation, and rehabilitation of The Orange.
12. The Zoning Ordinance (20.40.260) allows the exception to the maximum front setback in this district in that the allowance of a greater setback on the subject lot would be more consistent with the existing pattern of development. The side and rear setbacks adjacent to residential buildings exceed the 1.5 to 1 feet required by the Guidelines. Setbacks to driveways and parking meet or exceed the 10 feet required adjacent to residential interfaces. The interfaces to residential uses are addressed with 10-foot wide landscape strips and 7-foot high masonry walls as required by the Guidelines. Landscaping consists of turf, shrubs, and trees such as Evergreen Pear, London Plane, and relocated Palm trees. The trash enclosure is masonry construction with a sloped roof to contain debris.
13. The project contains 40 linear feet of benches equal to 20 seats which are 2 feet in width. The project meets the parking requirement of 8 spaces (one space for every 2.5 seats). The project exceeds CP Commercial Pedestrian setbacks for side (0 feet) and rear (25 feet). The proposed reconstruction of the "Marks Hot Dogs" sign conforms to the Sign Ordinance in that the Sign Code allows the Planning

Commission to approve the reconstruction and erection of historic signs that are not otherwise allowed under the Sign Ordinance if the building, structure, or sign has been designated as a historic landmark by the City Council.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. Although the project does not conform with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram, the following counterbalancing considerations justify the inconsistency:
  - a. The proposed project is for the relocation, preservation, and use of a significant historic structure and designated City Landmark.
  - b. The project is consistent with the planned pattern and character of development near the subject site in that it is located on a main thoroughfare in close proximity to commercial development at the corner of Alum Rock and Capitol Avenues.
  - c. The site will be used in conformance with the CP Commercial Pedestrian Zoning District of the site.
  - d. The project will not have any adverse effects on public health, safety, or welfare and will not be materially injurious to adjacent properties or improvements.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with all applicable provisions of the Commercial Design Guidelines.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality

of traffic such use would generate; and

- b. By other public or private service facilities as are required.
4. The Planning Commission may approve the reconstruction and/or erection of historic signs not otherwise allowed under the Sign Ordinance of the City of San Jose, in the case of any building, other structure, or sign that has been designated as a historic landmark by the City Council or by any state or federal authority with jurisdiction as prescribed in Section 23.02.1090 of Title 23 of the San Jose Municipal Code.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

#### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans



entitled, "Mark's Hot Dogs South Capitol Avenue, San José, California," dated October 26, 1999, last revised on February 9, 1999, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).

3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
7. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 15 feet above grade.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
10. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
11. **Sign Design.** Sign design and location, as delineated on the approved plan set, are hereby approved and constitute the project's entire sign program.
12. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
13. **Street Trees.** Street trees as shown on approved plans shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
14. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-14110) to the satisfaction of the Director of Public Works:

- a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
- b. *Grading Permit.* A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- c. *Storm Water Management.* The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of storm water pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 277-5161.
- d. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
- e. *Grading and Drainage Plan.* A Grading and Drainage Plan, indicating existing and finished elevations, is to be submitted for review to the City Hydraulic Engineer.
- f. *Electroliers.* Electrolier locations on project frontage shall be determined at the street improvement stage to the satisfaction of the Director of Public Works.
- g. *Right-of-Way Dedication.* Public right-of-way dedication shall be made consisting of a 12-foot wide right-of-way and a 10-foot wide temporary construction easement.
- h. *Landscaping.* Street trees shall be installed within the public right-of-way along the entire street frontage per City standards. The locations and species of the street trees will be determined at the street improvement stage.
- i. *Right-of-Way Improvements.* Public right-of-way improvements shall be provided under the terms of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works (including private engineered plans, insurance, bonds/deposit certificate and engineering and inspection fees) and shall consist of :
  - (1) Removing and replacing broken or uplifted curb and gutter and sidewalk along the project frontage.
  - (2) Constructing a new eight-foot wide sidewalk along Capitol Avenue frontage.
  - (3) Closing unused driveway cuts and constructing a new driveway.
  - (4) The VTA Capital Avenue Light Rail Project details the widening of Capital Avenue along the project frontage. If the project proposes to be in operation prior to the VTA widening,

temporary public improvements will be required to provide safe pedestrian and vehicular access to the project site.

15. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP02-022, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
16. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
17. **Hours.** This facility shall be limited to operation between the hours of 10:00 a.m. to 10:00 p.m. Sunday through Thursday, and 10:00 a.m. to 11:00 p.m. Friday and Saturday unless a Conditional Use Permit is approved by the City for other hours of operation.
18. **Amplified Sound.** All amplified sound shall be contained within the buildings and vehicles and the buildings shall be adequately insulated to prevent sound from emanating outside.
19. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
20. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
21. **HABS Documentation.** Prior to the issuance of a Public Works clearance, the developer shall retain a qualified consultant to conduct photo and written documentation according to Historic American Building Survey (HABS) standards while the City Landmark and its defining features are in their original location and condition to the satisfaction of the Director of Planning.

22. **Rehabilitation Standards.** The developer shall conduct all building removal, relocation, and rehabilitation in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* to the satisfaction of the Director of Planning.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
  2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
    - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
    - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
    - c. The use as presently conducted creates a nuisance.
- c: Bill Zavalaris, Community Housing Developers, 255 N. Market Street, No. 290, San Jose, CA 95110  
 Demos Pantelides, 303 Castro Street , San Francisco, CA 94114  
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